

IN THE
Supreme Court of the United States

OCTOBER TERM, 1987

DONNA OBERG, *et al.*,
v. *Petitioners,*

AETNA CASUALTY & SURETY CO. and
A. H. ROBINS CO.,
Respondents.

ALEXIA ANDERSON, *et al.*,
v. *Petitioners,*

AETNA CASUALTY & SURETY CO. and
A. H. ROBINS CO.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

PETITIONERS' REPLY MEMORANDUM

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PETITIONERS' REPLY MEMORANDUM

1. The final reason that respondents offer this Court for denying the Writ of Certiorari petitioners seek is that "[a]n end is in sight." Opposition at 14. Respondents state affirmatively that "an end to the Preliminary Injunction Order [of October 11, 1985] is in sight." *Id.* They imply that if the Fifth Amended Plan of Reorganization recently submitted to the Bankruptcy Court by respondent Robins is implemented, the preliminary injunction that has prevented petitioners from pursuing their claims against respondent Aetna will be lifted. Respondents' statement is not accurate; the implication is false. In fact, if the Fifth Amended Plan is approved

by the Bankruptcy Court, the preliminary injunction at issue in this case will become *permanent*.

The Fifth Amended Plan was filed by Robins in the Bankruptcy Court on February 11, 1988. Including the proposed Disclosure Statement and various exhibits attached thereto, it is over 400 pages in length. Because respondents have not provided any details concerning the Plan to this Court in their Opposition, salient portions of the Disclosure Statement and the Summary of the Plan contained in that Statement are included as a Supplemental Appendix ("S. App.") to this Reply.

In summary, the Fifth Amended Plan calls for the acquisition of Robins by another pharmaceutical company, American Home Products Corporation ("AHP"). S. App. 3, 12. As part of the merger agreement, AHP will pay \$2.255 billion into a "Claimants Trust," which will administer, settle and pay individual claims by Dalkon Shield victims. S. App. 3-4, 14. Under the Plan, two members of the Robins family, who are, respectively, the Chairman of the Board and Chief Executive Officer of Robins, and who have been named as defendants in countless Dalkon Shield cases, will each contribute \$5 million to the Claimants Trust. In consideration for that payment, all officers and directors of Robins will be released from personal liability to Dalkon Shield victims. S. App. 4, 6. Finally, respondent Aetna will pay \$75 million to the Claimants Trust,¹ contingent upon the settlement of the *Breland* class action. See Petition at 6-7 & n.3, 21-22; S. App. 9 (describing the *Breland* case). In exchange for this payment of \$75 million, Aetna hopes to obtain, through the mechanism of Robins' reorganization in bank-

¹ The Plan calls for Aetna to pay an additional \$25 million to the new company that results from the acquisition of Robins by AHP. That \$25 million will in turn be used by the new company to purchase insurance policies from Aetna in favor of the new company. The proceeds from these policies apparently may be used to pay Dalkon Shield claims not otherwise paid out of the Claimants Trust. S. App. 5.

ruptcy, a complete release of all claims by Dalkon Shield victims against Aetna for Aetna's own wrongdoing, and a *permanent* injunction preventing any Dalkon Shield victims ever from pursuing Aetna, or anyone else for that matter, in the future. S. App. 17-18, 21-22.²

Thus, the Plan discloses that Aetna, with the assistance of Robins, hopes to use Robins' reorganization in bankruptcy to achieve two ends: (1) prevent further discovery concerning petitioners' allegations that Robins and Aetna together obstructed justice and pursued policies concerning the testing and recall of the Dalkon Shield that directly resulted in substantial injuries, infertility, and death to hundreds of thousands of Dalkon Shield users and their families; and (2) enjoin permanently the pursuit and recovery of compensatory and punitive damages against Aetna for its role in these tortious and fraudulent acts. *See* Petition at 4.

The \$75 million Aetna has agreed to pay to obtain this release of its liability is roughly 3% of the total funds that will be deposited into the Claimants Trust. If AHP makes its contribution of \$2.255 billion to the Claimants Trust, as called for by the Plan, and that money is invested in accounts or instruments bearing interest at a rate of 8%, after only five months the interest on the AHP contribution will exceed Aetna's contribution. Thus, Aetna's proposed contribution to the planned reorganization is relatively miniscule. But the benefits it will obtain are enormous.

These aspects of the Fifth Amended Plan of Reorganization, upon which respondents rely but which they have

² The Plan provides that all claims against Aetna will be released if: (1) the District Court refuses to permit Dalkon Shield victims to "opt out" of the *Breland* class (apparently in direct contravention of this Court's decision in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (holding that due process requires the opportunity to "opt out" of a class action)); or (2) even if a victim "opts out" of the *Breland* class, she thereafter receives payment from the Claimants Trust. S. App. 17-18.

failed to place before this Court, indeed demonstrate that the "end is in sight." But the "end" is not an end to the District Court's Preliminary Injunction Order that has prevented petitioners from pursuing their claims against Aetna; it is instead an end to petitioners' rights to pursue their claims against Aetna *at all*.³ Respondents' assertion that "the end is in sight" because of the pendency of the Fifth Amended Plan of Reorganization is disingenuous. This Court should not be misled.

2. This case squarely presents important questions about judicial power and the limits on the exercise of that power, and related questions about the ability of respondent Aetna to manipulate the bankruptcy laws for its own benefit without ever submitting itself to the jurisdiction of a bankruptcy court. Respondents have not cited a single decision, other than in the case at hand, in which § 105 of the Bankruptcy Code ever has been utilized to stay litigation between third parties on the asserted basis that one of those parties might disrupt a bankruptcy reorganization effort by seeking discovery of the debtor's officers and employees. The Court of Appeals' affirmance of such an injunction is not only unprecedented, it affords power to the bankruptcy courts beyond the wildest imaginings of Congress when it enacted

³ In a recent *Wall Street Journal* article about Aetna's role in the Robins' plan of reorganization, Professor Frank Kennedy of the University of Michigan Law School was quoted as stating that if "dissident attorneys for [Dalkon] Shield claimants . . . challenge the Aetna agreement before the [Bankruptcy] [C]ourt approves it[,] the [C]ourt 'should and probably will delete (Aetna's) purported discharge.'" Another bankruptcy expert, New York attorney Martin Klein, is quoted in the same article as stating that "'[t]his is a very clever attempt,' by Aetna [to have the Bankruptcy Court relieve it of liability even though it is not a party to the bankruptcy reorganization], '[b]ut it isn't clear that it will work or that it ought to.'" See *Aetna Life Unit Tactic in Dalkon Case Is Seen Vulnerable to Legal Challenge*, *Wall St. J.*, January 22, 1988, at 30, col. 4.

§ 105, and beyond the broadest limits described by any other court which has addressed the jurisdictional reach of § 105. *See* Petition at 13-20.

Respondents' attempt to characterize the decision below as a straightforward application of bankruptcy law principles consistent with the usual standards governing the issuance of stays of litigation is flawed. *See* Opposition at 13. Respondents seek to insulate this case from further review because in October, 1985 the District Court found, without any explanation or elaboration, that "[t]he continuation of litigation . . . against The Aetna Casualty and Surety Company will impair and impede the debtor's reorganization effort." Opposition App. at 4a. Two and a half years have passed and, despite repeated efforts by petitioners, the District Court has refused to lift this stay, despite any *real* showing by Robins that the petitioners' litigation against Aetna would hamper the reorganization effort. *See* Petition at 19-20. Meanwhile, and continuing through the filing of their Joint Opposition, Robins and Aetna have continued to proclaim, like Tweedledum and Tweedledee,⁴ that "Aetna gave the District Court its assurance that it would seek to defend itself fully, including shifting any blame to

⁴ Aetna's proclamations of its readiness to defend itself vigorously by attacking Robins, and Robins' proclamations that Aetna's attack would interfere with the bankruptcy reorganization—when contrasted with the sweetheart deal these warriors struck in the Fifth Amended Plan of Reorganization—are indeed reminiscent of what Alice found on her journey through the looking glass:

"Tweedledum and Tweedledee
 Agreed to have a battle;
 For Tweedledum said Tweedledee
 Had spoiled his nice new rattle.
 Just then flew down a monstrous crow,
 As black as a tar-barrel;
 Which frightened both the heroes so,
 They quite forgot their quarrel."

L. Carroll, *Through The Looking-Glass And What Alice Found There* 52 (Random House Centennial ed. 1965). *See also id.* at 65-69.

Robins, if appropriate." Opposition at 11. This bellicose posturing is belied by the nature of the agreements between Aetna and Robins that are reflected in the Plan of Reorganization.

Petitioners feel safe in repeating that *no showing* ever was made in the District Court or the Court of Appeals as to what specific discovery Aetna would seek of Robins in petitioners' lawsuits, and that *no showing* ever was made by Robins as to how and to what extent that discovery would impede the reorganization effort. See Petition at 19-20. In this Court, respondents simply state that "Aetna's *intention* to seek discovery from Robins . . . , if permitted, is a matter of record." Opposition at 6 (emphasis added). But respondents cannot dispute that this "record" is totally devoid of specificity. Under *Landis v. North American Co.*, 299 U.S. 248 (1936), and its progeny, see Petition at 20-21, the stay never should have been entered in the first place. The time long since has passed when the Preliminary Injunction should have been dissolved.

Now that the Robins reorganization apparently is nearing completion, the respondents' strategy in this litigation has been revealed: Under the Fifth Amended Plan of Reorganization Aetna proposes to make a minimal contribution to the payment of claims by Dalkon Shield victims; the principal shareholders and officers of Robins will make a payment that is even less substantial. In exchange for these payments, no further claims may be presented against Aetna, the Robins family, or any officer or director of Robins *ever*. The claims petitioners otherwise would have the right to pursue—with the potential to bring before a court and jury the destruction of documents, obstruction of justice and wanton disregard for the public's health and safety that petitioners allege to have occurred, and for which they seek appropriate redress—will be enjoined forever.⁵ It is a strat-

⁵ The Disclosure Statement notes in passing that "[a] federal grand jury investigation is presently being conducted in the United

egy that indeed is clever; but it is a strategy based on a fundamental misapplication of § 105 of the Bankruptcy Code that this Court should correct.

This Court should accept plenary review of this case and rule that the permissible scope of the power of bankruptcy courts to stay litigation under 11 U.S.C. § 105 does not extend to litigation between parties who have not filed for protection under the Bankruptcy Code. This Court's failure to act now may result in petitioners losing forever their rights to seek redress of their injuries suffered at the hands of respondent Aetna.

Respectfully submitted,

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March 7, 1988

States District Court for the District of Kansas in connection with the Dalkon Shield. The proceeding is under seal by court order." S. App. 8. The existence of this Grand Jury perhaps has provided additional motivation for respondents to sound the death knell for any additional civil discovery against Aetna and Robins.

On March 3, 1988 another Grand Jury, sitting in the Middle District of Florida, indicted a Robins expert witness for perjury and obstruction of justice based on trial testimony he gave in the case of *Harre v. A.H. Robins Co.*, 750 F.2d 1501 (11th Cir. 1985). *See Professor Is Charged With Lying For Maker of Birth Control Device*, N.Y. Times, March 4, 1988, at 1, col. 1. The Court of Appeals that reviewed the facts surrounding this expert's testimony concluded that he testified falsely "with complicity of counsel." 750 F.2d at 1505. Robins' counsel in that case had been retained by Aetna.

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SUPPLEMENTAL APPENDIX

SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL APPENDIX

**EXCERPTS FROM THE FIFTH AMENDED
DISCLOSURE STATEMENT**

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

Chapter 11 Case

No. 85-01307-R

IN RE A. H. ROBINS COMPANY, INCORPORATED,
Debtor.

**Retained Proceeding
(Judge Merhige)**

**FIFTH AMENDED AND RESTATED
DISCLOSURE STATEMENT PURSUANT TO
SECTION 1125 OF THE BANKRUPTCY CODE**

February 11, 1988

[SUBJECT TO COURT APPROVAL]

**ATTENTION DALKON SHIELD CLAIMANTS—A 10
PAGE SPECIAL NOTICE TO WOMEN WHO USED
THE DALKON SHIELD FOLLOWS THE TABLE OF
CONTENTS INSIDE.**

* * * *

SPECIAL NOTICE TO WOMEN WHO USED THE DALKON SHIELD: HOW YOUR DALKON SHIELD CLAIMS WILL BE TREATED

The purpose of this section of the disclosure statement is to explain how your claim will be treated under the proposed Plan filed by Robins. It is only a brief summary. THE LEGAL DOCUMENTS THAT WILL GOVERN YOUR CLAIM ARE THE PLAN, THE TRUST AGREEMENTS, AND THE CLAIMS RESOLUTION FACILITY THAT ARE IN THIS BOOK. You should read the rest of this book carefully to help you decide how to vote on Robins' Plan. You should turn to the sections listed in the disclosure statement for more details. At the end of this section, you will be told how to get more information.

Your vote will help determine whether this Plan goes into effect. If this Plan goes into effect, payments to you will be as provided for in the Plan.

Background

On August 21, 1985, Robins filed for reorganization relief under Chapter 11 of the United States Bankruptcy Code. This filing followed many years of lawsuits over the Dalkon Shield IUD. Robins filed for Chapter 11 for two reasons. First, Robins had difficulty defending the many lawsuits filed against it relating to the Dalkon Shield. Second, Robins suffered from short term cash flow problems resulting from payment of the claims and lawsuits being brought against it for injuries said to have been caused by the Dalkon Shield.

Robins filed to obtain the time necessary to develop (i) a fair, orderly method for paying all valid Dalkon Shield claims and (ii) a plan for raising the money needed to pay those claims. Robins has filed a reorganization plan that it believes satisfies these two goals.

Under this Plan, Robins will be acquired by another pharmaceutical company, American Home Products Corporation ("AHP"). Robins will merge with a subsidiary of AHP. In this document, the company surviving the merger between Robins and a subsidiary of AHP is called "AHP Merger" or "the Successor Corporation." As part of the agreement to acquire Robins, AHP will cause money to be made available to pay valid Dalkon Shield claims. Other money available to pay these Dalkon Shield claims will come from money Robins has saved.

[2]

Money Available to Pay Dalkon Shield Claims

Under the Plan, Robins will set up two Trusts. Dalkon Shield Claims will be paid *solely* by the Trusts. The Trusts will administer and settle as well as pay the Dalkon Shield Claims. The Trustees—the people who are in charge of the Trusts—will be selected by the judge in charge of this Case. Robins will play no role in their selection. These Trustees will be totally independent of Robins.

Dalkon Shield Claims are divided into two types of Claims: Dalkon Shield Personal Injury Claims and Dalkon Shield Other Claims. Dalkon Shield Personal Injury Claims are those Claims held by people like you who used the Dalkon Shield and by certain relatives of those people. Dalkon Shield Other Claims are all other Dalkon Shield Claims. Dalkon Shield Other Claims include claims of others such as doctors, hospitals, distributors of the Dalkon Shield, and directors and officers of Robins who may have to pay other people for injuries said to have been caused by the Dalkon Shield. These Dalkon Shield Other Claimants would seek to be repaid by Robins for money they pay as a result of money paid or to be paid in connection with suits brought against them by Dalkon Shield claimants.

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People who used the Dalkon Shield and eligible members of their families—people who have Dalkon Shield Personal Injury Claims—will be paid from the Claimants Trust. The Dalkon Shield Other Claimants Trust will be used to pay doctors, hospitals, officers and directors of Robins, and others if they pay money to other people in connection with the Dalkon Shield. If any person has to pay a Dalkon Shield claim and that person would have had the right to ask Robins to bear all or part of the payment had the bankruptcy case not occurred, then that person will be able to look to the Other Claimants Trust for payment. Before any person or company will receive final payment from the Other Claimants Trust, that person or company must show that it would have had the right to be paid by Robins.

The Claimants Trust will get the money to pay your Claims from Robins and AHP Merger. \$2.255 billion will be paid to the Claimants Trust as soon as the Plan goes into effect. It is possible, however, that a start-up payment in the amount of \$10 million will be made to the Claimants Trust before the \$2.255 billion payment is made. If this \$10 million payment is made, it will be deducted from the \$2.255 billion payment.

In addition, the Other Claimants Trust may, from time to time, pay specified amounts of money to the Claimants Trust, if the Other Claimants Trust does not need the money and if the Trustees of the Other Claimants Trust decide these payments should be made.

[3] The Claimants Trust will also receive money from E. Claiborne Robins and E. Claiborne Robins, Jr. Mr. Robins is the Chairman of the Board of Directors of Robins. Mr. Robins, Jr. is the President and Chief Executive Officer of Robins. After the Merger occurs, they will pay \$5 million to the Claimants Trust and \$5 million to the Other Claimants Trust.

There is another possible source of money to pay your Claims. Money may be paid by The Aetna Life and

Casualty Company and related companies ("Aetna"). The money will be paid if a lawsuit that has been filed against Aetna, the Breland Case, is settled as provided in the Plan. If the Breland Case is settled, Aetna will pay \$50 million to the Claimants Trust. Aetna will also pay \$50 million to AHP Merger. AHP Merger will then immediately pay \$25 million to the Claimants Trust and \$25 million to Aetna as premium for certain insurance policies to be issued by Aetna in connection with the Plan and the settlement. In addition, Aetna will issue certain insurance policies that can be used to pay people with claims relating to the Dalkon Shield if their claims are not otherwise paid.

To be sure that there will be enough money available to pay all valid Dalkon Shield claims under the Plan, the Court conducted a hearing to estimate the value of Dalkon Shield claims. This hearing began on November 5, 1987, and ended on November 11, 1987. The Court heard evidence from all parties about the value of the Dalkon Shield Claims. The Dalkon Shield Claimants' Committee, which represents claimants like you, presented a great deal of evidence about the value of the claims. So did Robins and others. The evidence presented by all parties was the result of a great deal of work by experts. On December 11, 1987, the Court announced its decision that the total amount of money necessary to pay all Dalkon Shield claims and all expenses of the Trusts in full was \$2.475 billion, payable over a reasonable period of time.

Under the Plan, enough money will be paid into the Claimants Trust to permit payment in full of the Dalkon Shield claims and expenses of the Trusts. Because the estimation process is not an exact science, the money available to pay Dalkon Shield claims may prove to be more or less than the actual value of such claims. Trustees of the Claimants Trust may decide, from time to time, to delay payments made out of the Trust to

claimants to insure that there will be enough money in the Trust to pay all claimants. In that case, you might not be paid for this delay in the payment of your claim. It is possible, if the Trustees allow claims in a total amount above the Court's estimate, that some claimants may not receive full payment. It is also possible that there will be money left over. Under the Plan, a Claimant who does not receive full payment will never be able [4] to be paid by Robins, AHP Merger or officers and directors of Robins. If the Breland Case is settled, then, except for money from certain insurance policies Aetna will issue, you cannot be paid by Aetna. THE COURT MUST FIND, HOWEVER, BEFORE THE PLAN GOES INTO EFFECT, THAT THE PLAN PROVIDES ENOUGH MONEY TO SATISFY ALL VALID DALKON SHIELD CLAIMS AND EXPENSES OF THE TRUST IN FULL. As extra protection for claimants, Aetna will issue an insurance policy that will provide payments to claimants in case the Trust runs out of money, up to a certain amount.

It is also possible that there will be more than enough money to pay all claims. If there is enough money, people who would normally not have the right to be paid will get money. These people have claims that arose so long ago they would not be paid under normal legal rules. People who have claims that are valid and did not arise too long ago to be paid will be paid first. If money is left after all those claims are paid in full, valid claims that would be too old to be paid under normal legal rules will be paid from the Trust. If there is more than enough money, that is left over after these claims against and expenses of the Claimants Trust are paid in full, it will be divided among all people who received payments from the Trust in proportion to the amount of their payments. The Trustees can, however, decide not to make these payments if the amount of any payment would be extremely small. This money will take the place of punitive dam-

ages, which cannot be paid by the Trust. Punitive damages are monies paid in lawsuits over and above monies paid to compensate someone for their actual injuries. If there is no money left, there will be no payment in place of punitive damages.

* * * *

[14]

Dalkon Shield Litigation

Numerous lawsuits and claims alleging injuries claimed to be associated with use of the Dalkon Shield have been filed against Robins in the United States. Claims have also been filed against Robins in foreign countries. Lawsuits and claims have also been filed against Robins' insurer, Aetna Casualty and Surety Company ("Aetna"), and numerous co-defendants with Robins, including physicians and hospitals.

As of August 21, 1985, the date of commencement of the Case, there were approximately 6,000 suits and claims pending against Robins based on allegations concerning the Dalkon Shield. Through August 21, 1985, Robins had disposed of approximately 9,500 such suits and claims. In disposing of these suits and claims, Robins and its insurer had paid out approximately \$530 million. Before 1981, substantially all disposition costs (including legal expenses, but excluding punitive damages) were charged to products liability insurance carried by Robins.

Of the Dalkon Shield-related claims and suits disposed of before August 21, 1985, 60 suits were tried to judgment. Of that number, 33 resulted in verdicts in favor of plaintiffs and 27 resulted in verdicts in favor of Robins. Ten of the plaintiffs' verdicts and eleven [15] verdicts in favor of Robins were the subject of pending appeals when the Case was commenced. The Court lifted the automatic stay to allow some of these appeals to go forward. In one of these appeals, *Tetuan v. A. H. Robins*

Company, the Kansas Supreme Court upheld a jury verdict which awarded \$7.6 million in punitive damages, finding that punitive damages were appropriate under the facts of that case.

A federal grand jury investigation is presently being conducted in the United States District Court for the District of Kansas in connection with the Dalkon Shield. The proceeding is under seal by court order.

* * * *

The Insurance Settlement

Robins had product liability insurance with Aetna Life and Casualty Company ("Aetna Life") covering compensatory awards with respect to the Dalkon Shield for [16] periods before March, 1978. In 1979 Robins sued Aetna Life concerning its insurance coverage of Dalkon Shield liability. The case was settled in October, 1984. The principal terms of the settlement were (a) that Robins received \$70 million in additional Dalkon Shield insurance coverage; (b) Aetna Life agreed to continue to handle and defend Dalkon Shield cases and claims on Robins' behalf; and (c) Robins and Aetna Life released each other from any claims that either had against the other as of the date of the Settlement Agreement (October 31, 1984) with respect to the manufacture and marketing of the Dalkon Shield and/or the issuance of insurance for or investigation, defense, settlement and handling of Dalkon Shield cases or claims. Aetna Life has filed a claim in this Case for reimbursement of approximately \$58 million for expenditures and payments made or to be made by Aetna Life on behalf of Robins in accordance with insurance policies issued by Aetna Life to Robins as modified by certain agreements between Aetna Life and Robins (principally the Settlement Agreement). This amount includes but is not limited to items such as payments made by Aetna Life in excess of the extended limits of certain insurance policies; payments

made by Aetna Life as the guarantor of certain obligations of Robins in connection with the settlement of certain Dalkon Shield suits filed in Minnesota; and payments made by Aetna Life pursuant to Court order authorizing the reissuance of settlement checks written but not paid before the Case was filed. This amount also includes unliquidated and contingent claims for the fees and expenses of defense counsel who provided legal services to Robins before the Case was filed and for contribution from Robins based on actions filed against Aetna Life relating to the Dalkon Shield.

In April, 1986 a lawsuit was filed against Aetna Life. That lawsuit, *Breland v. Aetna Life and Casualty Co.* (the "Breland Case") is now pending in the Eastern District of Virginia, where the Robins Chapter 11 Case is pending. In the Breland Case, the plaintiffs assert numerous claims against Aetna Life, and attack the Settlement Agreement. The Breland Case has been stayed pursuant to an Order of the Court, although there have been limited exceptions to the stay.

As part of the Plan, Robins and Aetna Life and its affiliates (Aetna) have settled the controversies among them. See "SUMMARY OF THE PLAN—Other Provisions of the Plan—Compromise and Settlement with Aetna."

* * * *

[23]

Injunction of Dalkon Shield Litigation against Robins' Co-Defendants

At the time the Case was filed, Robins was named as a defendant in approximately 5,000 civil actions pending throughout the country seeking damages in connection with the Dalkon Shield. The filing of the Case invoked the protection of the automatic stay of section 362 of the Code, pursuant to which all pending litigation against Robins was suspended automatically. However, in ap-

proximately half of the pending civil actions, other persons or entities were named as co-defendants along with Robins. The claims against those co-defendants were also based on the Dalkon Shield and sought damages derivative of, or related to, the causes of action against Robins.

Robins sought relief from the burden that the litigation represented by commencing an action against [24] eight representative plaintiffs for a preliminary injunction against continuation of Dalkon Shield litigation against any co-defendants on the grounds, among others, that continuation of the litigation posed a significant threat to Robins' ability to reorganize and would result in a direct and substantial drain on Robins' remaining insurance coverage with a corresponding diminution in funds available for creditors and claimants under a plan of reorganization. See "THE COMPANY—The Insurance Settlement."

On October 11, 1985, the Court ordered that Dalkon Shield litigation against co-defendants would be enjoined until further order of the Court. The order was appealed to the United States Court of Appeals for the Fourth Circuit and argued on December 3, 1985. On April 10, 1986, the Court of Appeals upheld the Court's granting of the preliminary injunction. Subsequently, two groups of claimants commenced suits in state courts against one of the co-defendants, Aetna Life, but carefully tailored their complaints. The two groups eventually sought Court approval to commence these suits, arguing that their suits would have no effect on Robins, but Court approval was denied. An appeal was taken to the Fourth Circuit Court of Appeals, which, in an order dated September 9, 1987, upheld the Court's decision, reasoning that Aetna Life would have to implicate Robins in any suit concerning the Dalkon Shield, and that these suits should therefore be stayed.

* * * *

[35]

Dalkon Shield Claimants' Committee Motions to Commence Suits

On August 8, 1987, the Dalkon Shield Claimants' Committee filed a motion for leave to commence an adversary proceeding on behalf of Robins against E. Claiborne Robins, E. Claiborne Robins, Jr., William L. Zimmer, III, all of whom are directors of Robins, and McGladrey, Hendrickson & Pullen, certified public accountants. In its motion, the Dalkon Shield Claimants' Committee alleged that Robins had failed to pursue colorable claims against the three directors and against McGladrey, Hendrickson & Pullen, and that the Court should allow it to pursue them in Robins' behalf. More specifically, the Dalkon Shield Claimants Committee alleged that the three named directors were liable to Robins for, among other actions, causing Robins to declare and pay improper dividends. The Dalkon Shield Claimants' Committee also alleged that McGladrey, Hendrickson & Pullen was liable to Robins for, among other things, failing to adequately account for estimated Dalkon Shield liability.

On August 13, 1987, the Dalkon Shield Claimants' Committee filed a motion for leave to commence adversary proceedings on behalf of Robins against Aetna Life and certain of Robins' subsidiaries. In its motions, the Dalkon Shield Claimants' Committee alleged that Robins had failed to pursue colorable claims against Aetna Life and the subsidiaries and that the Court should allow it to pursue them on Robins' behalf. More specifically, the Dalkon Shield Claimants' Committee alleged that Aetna Life is jointly liable with Robins to Dalkon Shield claimants for failure to make a timely disclosure to the Dalkon Shield claimants of the health risk associated with the use of the Dalkon Shield. The Dalkon Shield Claimants' Committee further argued that Robins has a claim against Aetna Life for contribution in connection with

settlements and judgments, paid and to be paid, to resolve Dalkon Shield claims. The Dalkon Shield Claimants' Committee also alleged that Robins has a claim for contribution against certain Robins subsidiaries that were either involved in the manufacture of the Dalkon Shield or that sold and distributed the Dalkon Shield abroad.

On August 18, 1987, Robins filed a response to the Dalkon Shield Claimants' Committee's motions, urging the Court not to authorize the commencement of these suits or in the alternative that the Court stay these [36] suits. A report of the examiner stated that there were certain colorable claims against certain officers, directors and Aetna Life, and that actions should be commenced to toll the running of the statute of limitations. At a hearing held on August 19, 1987, the Court granted the Dalkon Shield Claimants' Committee's motions but, in an order dated September 4, 1987, ordered that immediately following perfection of service of process sufficient to toll the statute of limitations the suits against all defendants be stayed.

* * * *

[39]

PROPOSED MERGER WITH AMERICAN HOME PRODUCTS CORPORATION

Background

Pursuant to an Agreement and Plan of Merger to be dated as of _____, 1988, (the "Merger Agreement") Robins and American Home Products Corporation ("AHP") will agree to the acquisition of Robins by AHP on the terms summarized below. This acquisition is a cornerstone of the Plan: should the Merger not take place for any reason, the Plan will not be consummated. The Merger Agreement will not be executed until its execution is approved by the Court pursuant to an order that has become a Final Order. Robins intends to file a

motion requesting such approval in the immediate future. The Merger Agreement is summarized below. THE SUMMARY OF THE MERGER AGREEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED INFORMATION SET FORTH IN THE MERGER AGREEMENT WHICH IS ATTACHED AS ANNEX 5.

* * *

[44]

Conditions to Closing

The Merger Agreement contains a number of conditions to closing that must be met for the Merger to occur and, therefore, for the Plan to be consummated. Key conditions to closing include:

Breland Settlement. Neither AHP nor Robins will consummate the Merger unless there shall have been entered an order dismissing with prejudice the Breland Case. This condition may not be waived by either AHP or Robins.

* * *

[49]

SUMMARY OF THE PLAN

Robins expects that under the Plan holders of Claims against the interests in Robins will obtain a recovery with a value in excess of what otherwise would be available if the assets of Robins were liquidated under Chapter 7 of the Code. See "ACCEPTANCE AND CONFIRMATION OF THE PLAN—Best Interests of Creditors and Stockholders—Liquidation Analysis."

THE FOLLOWING IS A SUMMARY OF CERTAIN SIGNIFICANT ELEMENTS OF THE PLAN. THIS SUMMARY OF THE PLAN IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED INFORMATION SET FORTH IN THE PLAN AND THE EXHIBITS THERETO.

* * *

[54]

Treatment of Dalkon Shield Personal Injury Claims

On the Consummation Date, Robins will cause (i) the execution and delivery of the Claimants Trust Agreement, thereby establishing the Claimants Trust, and (ii) the payment by Robins of the Claimants Trust Funding Payment of \$2.255 billion to the Claimants Trust. Funding of the Claimants Trust will be reduced by an earlier start up payment made to the Claimants Trust. A start up payment of \$10 million will be made to the Claimants Trust to pay for initial administrative expenses of the Trust if the Consummation Date does not occur within 90 days after the Confirmation Date. Additional funding may be supplied to the Claimants Trust through Transfer Payments from the Other Claimants Trust. Moreover, additional funding and excess insurance may be supplied to the Claimants Trust by Aetna.

In addition, \$5 million will be paid to the Claimants Trust by E. Claiborne Robins and E. Claiborne Robins Jr. This payment will be paid after the Confirmation Order had been entered if there have been no changes to the Plan as filed February 1, 1988 that materially and adversely effect either E. Claiborne Robins or E. Claiborne Robins Jr. and if there has been no change to the release or injunction provided in Sections 8.03 and 8.04 of the Plan filed February 1, 1988 that is adverse to either of them. So that no violation of the Shareholders Agreements (which are a condition to the Merger) will occur, this payment will be made on the fifteenth day after the date that financial results covering at least thirty days of post-Merger combined operations of AHP and Robins (within the meaning of the Pooling Rules as those terms are defined in the Merger Agreement) have been published.

On the Consummation Date, Robins will transfer to the Claimants Trust, for the benefit of the Claimants Trust as an insured party thereunder, all insurance poli-

cies under which Robins or any Affiliate may be covered in respect to Dalkon Shield Claims, to the full extent of such coverage, that are assignable without cancellation or reduction of coverage and which Robins elects to transfer. With respect to such insurance policies that Robins does not elect to transfer, Robins will take all actions as are necessary or desirable to enable the Claimants Trust at its expense, to obtain the benefits of coverage thereunder. If Aetna fulfills its obligations [55] under the Plan, however, these insurance policies will not include policies written by Aetna. See "SUMMARY OF THE PLAN—Other Provisions of the Plan—Compromise and Settlement with Aetna."

The Claimants Trust will assume full responsibility for resolving all Dalkon Shield Personal Injury Claims pursuant to the Claimants Trust Agreement and the CRF, for making payments on account of Dalkon Shield Personal Injury Claims that become Allowed Dalkon Shield Personal Injury Claims, for fulfilling its other obligations under the Claimants Trust Agreement, for paying Dalkon Shield Liquidated Claims of Personal Injury Claimants that are or become Allowed Claims, and for paying its own costs and expenses, all as more fully set forth in the Claimants Trust Agreement. See "THE DALKON SHIELD CLAIMANTS TRUST."

Persons with Dalkon Shield Personal Injury Claims may only look to the Claimants Trust for payment. The Court has found that the amount of money available to this Trust is sufficient to pay all Allowed Dalkon Shield Personal Injury Claims in full. If the funds available to the Claimants Trust nevertheless should ultimately prove to be insufficient to satisfy all Dalkon Shield Personal Injury Claims and Dalkon Shield Liquidated Claims of Personal Injury Claimants in full, a person with a Dalkon Shield Personal Injury Claim may not receive full, or possibly any, compensation depending on procedures established by the Trustees.

Treatment of Dalkon Shield Other Claims

On the Consummation Date, Robins will, in full satisfaction and discharge of all Dalkon Shield Other Claims and Dalkon Shield Liquidated Claims of Other Claimants, cause (i) the execution and delivery of the Other Claimants Trust Agreement, thereby establishing the Other Claimants Trust, (ii) the payment by Robins of the Other Claimants Trust Funding Payment of \$45 million to the Other Claimants Trust and (iii) the performance of certain Robins' obligations under the Plan. In addition, \$5 million may be paid to the Other Claimants Trust by E. Claiborne Robins and E. Claiborne Robins Jr. This payment will only occur if after the Confirmation Order has been entered there have been no changes to the Plan filed February 1, 1988 that materially and adversely effect [56] either E. Claiborne Robins or E. Claiborne Robins Jr. and if there has been no change to the release or injunction provided in Sections 8.03 and 8.04 of the Plan filed February 1, 1988 that is adverse to either of them. So that no violation of the Shareholder Agreements (which are a condition to the Merger) will occur, this payment will be made on the fifteenth day after the date that financial results covering at least thirty calendar days of post-Merger combined operations of AHP and Robins (within the meaning of the Pooling Rules as those terms are defined in the Merger Agreement) have been published. Subject to the continuing jurisdiction of the Court, the Other Claimants Trust will assume full responsibility for resolving all Dalkon Shield Other Claims, for making payments on account of Dalkon Shield Other Claims under the conditions set forth in the Other Claimants Trust Agreement, for paying Dalkon Shield Liquidated Claims of Other Claimants, for fulfilling its other obligations under the Other Claimants Trust Agreement, and for paying its own costs and expenses, all as set forth in the Other Claimants Trust Agreement. See "THE DALKON SHIELD OTHER CLAIMANTS TRUST."

To the extent that money is available in the Other Claimants Trust, Transfer Payments may be made to the Claimants Trust in accordance with the schedule annexed to the Other Claimants Trust Agreement. See "THE DALKON SHIELD OTHER CLAIMANTS TRUST—DISTRIBUTIONS TO THE CLAIMANTS TRUST."

* * * *

[60]

Other Provisions of the Plan

The following paragraphs summarize certain significant provisions of the Plan other than those regarding the classification and treatment of Claims and interests. The Plan itself should be referred to for the complete text of these and other provisions of the Plan.

Compromise and Settlement with Aetna. In order to obtain an additional source of funding for Dalkon Shield Personal Injury Claims and to enable Robins and AHP to satisfy a condition of the Merger Agreement:

(a) On the later of (i) the date, if any, that an order in the Breland Case approving a qualified Breland Settlement dismissing [] the Breland Case with prejudice shall have become a Final Order, (ii) the Consummation Date, and (iii) the date Aetna Life and Casualty Company (and its Affiliates) ("Aetna") has performed its obligations under the Qualified Breland Settlement, Aetna will be entitled to and shall benefit from certain releases and the injunctions provided for in the Plan, and from that time forward claims against Aetna shall not be Unreleased Claims, except claims and actions against Aetna relating to any insurance policies that may be issued by Aetna in connection with the Plan or settlement of the Breland Case shall not be released and enjoined. The preceding sentence notwithstanding, these injunctions and releases shall not apply to any claims against Aetna held by persons who opt out of the plain-

tiff class in the Breland Case (if opt outs are permitted), unless and until such Persons receive payment in full from the Claimants Trust pursuant to the Plan. [61] A "Qualified Breland Settlement" will include terms at least as favorable to the Claimants Trust, those asserting Dalkon Shield Personal Injury Claims, and to Robins, AHP, the Successor Corporation, and any of their Affiliates as the following:

(i) On or before the later of (x) the tenth Business Day after the day upon which an order approving the settlement of the Breland Case and dismissing it with prejudice shall have become a Final Order and (y) all other conditions precedent to Aetna's obligations under the settlement have been satisfied, Aetna shall be required to cause \$50 million to immediately be deposited into the Claimants Trust;

(ii) Aetna will pay \$50 million to the Successor Corporation (\$25 million of which shall immediately be deposited by the Successor Corporation into the Claimants Trust and \$25 million of which shall immediately be paid to Aetna in respect of the premium on the insurance policies issued or to be issued by Aetna under a Qualified Breland Settlement); and

(iii) Aetna will issue and deliver all those policies of insurance described in Exhibit E to the Plan on the terms and conditions substantially as set forth in Exhibit E to the Plan. These policies are described in Annex 6 to this disclosure statement.

(b) In the event the Consummation Date occurs before the order approving the Qualified Breland Settlement and dismissing the Breland Case becomes a Final Order, then, on the Consummation Date, Aetna will issue the Primary Excess Policy with a limit of \$50 million and an Outliers Policy, such policies to have terms and conditions substantially as set forth in Exhibit E to

the Plan. These policies are described in Annex 7 to this disclosure statement. If the Qualified Breland Settlement is thereafter implemented, then these policies shall become a part of and not in addition to the policies required to be issued as a part of the Qualified Breland Settlement.

[62] (c) On the Consummation Date.

(i) the Claim of Aetna will become a Disallowed Claim;

(ii) Adversary Proceeding No. 87-1006, commenced in the Case against Aetna by the Dalkon Shield Claimants' Committee, in its own right on behalf of Robins, will be designated as a claim by and under the control of Robins, and such proceeding, including, Aetna's counterclaim, will be dismissed with prejudice;

(iii) The policies issued by Aetna under paragraph (b) above shall discharge all claims Robins, the Successor Corporation and their subsidiaries and Affiliates may have with respect to any coverage remaining under those insurance policies issued by Aetna to Robins and/or its subsidiaries that afford coverage for the Dalkon Shield.

Discharge; Release. Except as otherwise expressly provided in the Plan, the confirmation of the Plan will provide that Robins is discharged on the Confirmation Date [from] all debts of Robins arising before the Confirmation Date, including all debts based upon or arising from Dalkon Shield Claims and Dalkon Shield Liquidated Claims and all claims for interest. It is the intent of the Plan that holders of Dalkon Shield Claims look exclusively to the Trusts for resolution and compensation of their Claims after consummation of the Plan.

The Plan also provides that, except as otherwise expressly provided in the Plan, effective as of the Confirma-

tion Date, all Persons who have held, hold or may hold Claims, including Dalkon Shield Claims or Dalkon Shield Liquidated Claims, who have held, hold, or may hold Robins Common Stock and Robins, the Successor Corporation, and their Affiliates in consideration of the obligations of Robins and the Successor Corporation under the Plan, are deemed to have forever released all claims that they possess or may possess against any Person based upon or related in any manner to the Dalkon Shield.

This release, however, shall not apply to any insurer (including, subject to section 6.06 of the Plan, [63] Aetna) or to claims based exclusively on medical malpractice if, but only if, such claims cannot be, either directly or indirectly, asserted or brought over against the Trusts, Robins, the Successor Corporation, any Affiliates thereof, or any other Person intended to be protected by the injunction in the Plan.

In addition, the Plan also does not release any claims Robins, the Successor Corporation or any Affiliate thereof or either of the Trusts may have against Aetna relating to the insurance policies to be issued by Aetna in connection with the Plan or settlement of the Breland Case.

These release provisions may have important ramifications for the holder of an Allowed Dalkon Shield Personal Injury Claim if the Trusts are insufficiently funded and the additional insurance to be provided by Aetna (which will aggregate at least \$100 million and could be as much as \$350 million) is exhausted. Such ramifications include the fact that Personal Injury Claimants will have virtually no recourse to seek compensation for any injuries from the Dalkon Shield except as provided in the CRF. Even if the Trusts are insufficiently funded to provide any compensation, the holder of a Dalkon Shield Personal Injury Claim may not attempt to recover from Robins or any other Person. The Court has found, however, that the Trusts are sufficiently funded to pay all

allowed Dalkon Shield Personal Injury Claims in full. In any event, after confirmation of the Plan, Dalkon Shield Personal Injury Claim[ant]s may not be able to successfully challenge the validity of the releases or other provisions of the Plan in other courts.

Injunction. The order confirming the Plan will enjoin all Persons who have held, hold, or may hold Claims, who have held, hold or may hold Robins Common Stock and Robins, the Successor Corporation and any of their Affiliates, from taking certain actions against Robins, the Successor Corporation, or any Affiliate thereof, or any other Person including either of the Trusts inconsistent with the provisions of the Plan. Under the Plan, the Court must enjoin the commencement of any action or other proceeding with respect to such Claim against Robins, the Successor Corporation or any Affiliates thereof or any other Person including either of the Trusts, or Robins property, with respect to any Claim or Dalkon Shield-Related Claim, the enforcement, attachment [64] or recovery by any manner or means of any judgment, award, decree or order against Robins, the Successor Corporation, or any Affiliates thereof, or any other Person, including either of the Trusts, or Robins property, with respect to such Claim or Dalkon Shield-Related Claim or the creation, perfection or enforcement of any encumbrance against Robins, the Successor Corporation or any Affiliates thereof, or any other Person including either of the Trusts, or the property of either, with respect to such Claim or Dalkon Shield-Related Claim, and the assertion of any setoff, right of subrogation, or recoupment against any obligation or property of Robins, the Successor Corporation, or any Affiliates thereof, or any other Person including either of the Trusts with respect to any such Claim or any Dalkon Shield-Related Claim, from any act, in any manner, in any place whatsoever, that does not conform to or comply with the Plan. See "SUMMARY OF THE PLAN—Conditions Precedent—Conditions to Consummation."

This injunction shall not, however, prohibit Persons from asserting certain limited claims exclusively for medical malpractice or against insurers (including Aetna, except as specifically provided in the Plan). Also, the injunction does not apply to any claim by Robins, the Successor Corporation, any Affiliate thereof or either of the Trusts against Aetna relating to any insurance policies that may be issued by Aetna in connection with the Plan or settlement of the Breland case.

Although the Plan's provision for the release of Persons other than the Trust and the injunction against the assertion of Dalkon Shield-Related Claims other than against the Trusts is subject to legal challenge, Robins believes that adequate bases exist for courts to uphold the release and injunction.

After the order confirming the Plan becomes final, holders of Dalkon Shield Personal Injury Claims may not be able to challenge the validity of the release and injunction in other courts. Most importantly, Robins believes that funds available to the Trusts are adequate to pay all Dalkon Shield-Related Claims in full, so that there will be no need to seek recourse against any Persons other than the Trusts. However, in the event that the funds available in the Trusts are inadequate to pay all Dalkon Shield Claims and Dalkon Shield Liquidated Claims in full, Dalkon Shield claimants will, nevertheless, be enjoined from taking virtually any action to recover for their damages apart from those procedures provided for under the Trust Agreements and in the CRF, including any action against the Successor Corporation, or officers and directors of Robins. The Plan requires that to confirm the Plan, the Court must rule that the funds available in the Trusts are adequate to pay all Dalkon Shield claims in full.

* * * *

[66]

Conditions Precedent

The Plan provides that certain conditions must be met or waived by AHP or Robins and AHP both before confirmation of the Plan may occur, and that certain conditions must be met or waived by AHP or Robins and AHP both before consummation of the Plan may occur.

Conditions to Confirmation. For confirmation of the Plan, the Merger Agreement must have been executed and delivered.

Conditions to Consummation. The Plan provides that consummation of the Plan shall not occur unless the Confirmation Order shall have become a Final Order. The Confirmation Order must provide as follows:

1. that any Person now or hereafter asserting a right to payment against Robins related to the Dalkon Shield held a dischargeable Claim against Robins if the Dalkon Shield relating to the Claim was inserted before the commencement of the Case;

2. that the Dalkon Shield Claim of any Personal Injury Claimant who failed to file with the Court a timely and proper written notice of claim is a Disallowed Claim unless it is to be reinstated in accordance with the CRF;

3. that Robins is discharged immediately from any claim and any debt that arose before the Confirmation Date;

4. that Robins' liability for all such Claims or debts, and for the costs and expenses of the Trusts is limited to the amounts that it is paying or causing to be paid under the Plan, the payments into the Trusts provided for in the Plan are sufficient to pay all Allowed Dalkon Shield Personal Injury Claims, Allowed Dalkon [67] Shield Liquidated Claims and costs and expenses of the Trusts;

5. that any portion of any Dalkon Shield Claim that is a Claim for punitive damages is a Disallowed Claim; provided, however, that holders of Dalkon Shield Claims subject to the CRF are entitled to receive from the Claimants Trust any sums payable in lieu of punitive damages pursuant to the CRF;

6. that at least five days before the first day of the confirmation hearing (the "First Hearing Day"), each Person retained or requesting compensation pursuant to sections 327, 328, 330, 503(b) and 1103 of the Code filed with the Court a binding estimate of the maximum amount of allowance of compensation and reimbursement of expenses to be requested in the Case (including any compensation for substantial contribution in the Case or for any fees or premiums in addition to normal hourly charges or quoted fees), for the period from the commencement of the Case through the First Hearing Day;

7. that the Plan does not provide for the liquidation of all or substantially all of the property of Robins' estate, and shall contain the releases and injunction provided for in section 8.03 and 8.04 of the Plan and provide that such releases and injunctions are effective as provided in the Plan;

8. that the transfers of property by Robins to the Successor Corporation (i) are or will be legal, valid and effective transfers of property; (ii) vest or will vest the Successor Corporation with good title to such property free and clear of all liens, charges, claims, encumbrances, or interests, except as expressly provided in the Plan; (iii) do not and will not constitute fraudulent transfers or conveyances under the Code or under the laws of the United States, and State, territory, possession or the District of Columbia; and (iv) do not and will not subject the Successor Corporation or its Affiliates to any liability by reason of such transfer under the laws of the United States, any State, territory or possession thereof

or the District of Columbia based, in whole or in part, directly or indirectly, on any theory of law, including without limitation, any theory of successor or transferee liability;

[68] 9. that the provisions of the Confirmation Order shall be nonseverable and mutually dependent;

10. that all conditions to the closing of the Merger Agreement shall have been satisfied (or waived in accordance with the provisions of the Merger Agreement) and the cash payments referred to in Sections 5.01 and 5.02 of the Plan shall have been made to the Trusts;

11. that all executory contracts and unexpired leases assumed by Robins during the Case or under the Plan will be assigned and transferred to the Successor Corporation;

12. that the maximum aggregate liability, if any, of Robins to Rorer Group Inc., Rorer Merger Corp., their affiliates or agents, arising under or related to the Agreement and Plan of Merger among Rorer Group Inc., Rorer Merger Corp. and Robins is \$25 million plus the out-of-pocket expenses of Rorer Group Inc., if any, that may be recoverable under section 9.2 of such agreement;

13. that the complaint regarding alleged improper dividend payments filed in the Case is dismissed with prejudice and that the defendants named therein shall be released for all liability to Robins for all matters that were alleged [or] that could have been alleged in the complaint, upon payment of the \$10 million by Mr. Robins and Mr. Robins Jr. to the Trusts (the "Robins Family Contribution") (with each side to bear its own costs);

14. that the contested matter in the Case regarding a Robins helicopter is dismissed with prejudice (with each side to bear its own costs) and further that the clerk is directed to pay the sum deposited by E. Clai-borne Robins Jr. into the registry of the District Court

in connection with such contested matters, together with any earnings thereon, to Robins and that in exchange for such payment, E. Claiborne Robins Jr. shall be released for all liability to Robins for those matters that were alleged or could have been alleged in that contested matter;

15. that the Claims evidenced by the proofs of claim filed by present and former officers and directors for indemnification and contribution with respect to acts [69] or omissions related to Dalkon Shield are Allowed Claims upon payment of the Robins Family Contribution;

16. that the releases and injunction provided in Sections 8.03 and 8.04 of the Plan are an integral part of the compromises and settlements incorporated in the Plan;

17. that the Robins Family Contribution is valuable consideration for the release contained in Section 8.03, the injunction provided in Section 8.04 of the Plan, other terms and conditions of the Plan, and the benefits of the Other Claimants Trust; and

18. for the establishment of the Trusts and the transfers to the Trusts pursuant to Sections 5.01 and 5.02 of the Plan.

Other conditions to consummation are that the Class Action Settlement shall have been approved by a Final Order, and the Court shall have entered a Final Order providing that the Fee Claims shall be capped.

A final condition to consummation is that no request for revocation of the order confirming the Plan under section 1144 of the Code shall have been made and still be pending.

Unless the above conditions to confirmation and consummation are fulfilled, the Plan will not go into effect even if all the other requirements have been satisfied.

